

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | 4:05CR3122 |
| |) | |
| Plaintiff, |) | MEMORANDUM |
| vs. |) | AND ORDER |
| |) | |
| JULIO CABALLERO, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court on a report and recommendation by Magistrate Judge Piester (filing 20), recommending that Defendant's motion to suppress (filing 16) be denied. Judge Piester's findings and conclusions were announced at the end of an evidentiary hearing that he conducted on January 18, 2006. See Transcript (filing 24) at 98-102. Essentially, Judge Piester concluded that there was probable cause to stop Defendant's vehicle for a traffic violation, and that while the officer did not have reasonable suspicion to expand the stop, Defendant voluntarily consented to a search of his vehicle. Pursuant to NECrimR 57.3 and 28 U.S.C. § 636(b)(1), Defendant has filed a statement of objections to the report and recommendation (filing 25).

I have conducted a de novo review of the record. I find that inasmuch as the Magistrate Judge has fully, carefully, and correctly found the facts and applied the law, Defendant's objections should be denied and the report and recommendation should be adopted. To put the matter simply, I credit Trooper DeFreece's testimony that he observed Defendant's vehicle fail to stop at a stop sign and that, after completing the traffic stop and telling Defendant that he was free to go, Trooper DeFreece obtained Defendant's affirmative consent to search the vehicle. I also specifically find that Trooper DeFreece could reasonably believe that Defendant voluntarily and knowingly consented to the search.

Accordingly,

IT IS ORDERED that:

1. Magistrate Judge Piester's report and recommendation (filing 20) is adopted;
2. Defendant's objections to the report and recommendation (filing 25) are denied; and
3. Defendant's motion to suppress (filing 16) is denied in all respects.

February 17, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge